



WEB COPY

CRL A No. 921 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12-02-2026

PRONOUNCED ON : 20-02-2026

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL A No. 921 of 2023

Mari

... Appellant/A2

Vs.

The Inspector Of Police
T-5, Thiruverkadu Police Station,
Chennai.
[Crime No. 57/2021]

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the Judgment and conviction of the lower Court imposed in C.C.No.133 of 2022 dated 28.07.2023 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and acquit the Appellant herein.

For Appellant: Mr. C.V.Kumar

For Respondent: Mr.S.Rajakumar
Additional Public Prosecutor



Judgment

WEB COPY

The Criminal Appeal challenges the Judgement dated 28.07.2023 passed in C.C.No.133 of 2022 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, convicting the appellant for the offence under Sections 8(c) r/w 20(b) (ii) (B) and 29(1) of the NDPS Act and sentencing her to undergo rigorous imprisonment for two years and to pay a fine of Rs.20,000/- in default to undergo rigorous imprisonment for two months.

2.(a) It is the case of the prosecution that on 22.02.2021 at about 7.30 hours near Kaduvetti Bus Stop at Ottraipalam, Thiruverkadu, the accused were intercepted pursuant to a secret information received by PW1 and the first accused was found in possession of 8 Kgs of Ganja and A2-the appellant herein was found in possession of 5 Kgs of Ganga; that they were carrying it in two different gunny bags and after completing the formalities, the appellant along with the other accused were arrested, an FIR [Ex.P7] in Cr.No.57 of 2021 was registered for the offences under Sections 8(c), 20(b)(ii)(B) and 29(1) of the NDPS Act and on completion of investigation, PW4 has filed the final report against the accused for



CRL A No. 921 of 2023

the offence under Sections 8(c) r/w 29(1) and 8(c) r/w 20(b)(ii)(B) of the NDPS Act, before the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

(b) On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the case was taken on file as C.C.No.133 of 2022 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, for trial. The Trial Court had framed charges against the accused for the offences under Sections 8(c) r/w 29(1) and 8(c) r/w 20(b)(ii)(B) of the NDPS Act, and when questioned, the accused pleaded 'not guilty'.

(c) To prove its case, the prosecution had examined 4 witnesses as P.W.1 to P.W.4 and marked 9 documents as Ex.P1 to Ex.P9, besides 6 material object as PM.O.1 to PM.O.24. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness nor marked any document on their side.



WEB COPY

(d) On appreciation of oral and documentary evidence, the trial Court convicted the accused for the offence under Section 8(c) r/w 20(b) (ii)(B) of the NDPS Act and sentenced the accused/A2 as stated above. Hence, the accused/A2 have preferred the instant appeal challenging the said conviction and sentence.

3. It is reported that the first accused has not filed any appeal and had served the sentence.

4. The learned counsel for the appellant/A2 would submit that the prosecution suffers from several infirmities; that a joint communication under Section 50 of the NDPS Act, was served, which is illegal; that though it is the case of the prosecution that the contraband was brought by the first accused and the second accused/appellant, in two gunny bags, PW2 would admit in his cross-examination that only one gunny bag was seized; that though independent witnesses were examined during the course of the investigation, none of them were examined during trial, which falsifies the prosecution case; that though 56 gms was taken as a sample, only 46.7 gms was sent to the expert as could be seen from



Ex.P6-Chemical Analysis Report; that the contraband was not sent within 72 hours of seizure and was sent almost 25 days after the alleged seizure and that no document was produced to establish the safe custody of the contraband from 22.02.2021 to 17.03.2021; and that where the evidence of police witnesses is full of contradictions and unconvincing, the non examination of independent witnesses would be fatal to the prosecution and prayed for acquittal.

5. The learned Additional Public Prosecutor *per contra* submitted that the appellant was found in possession of 5 kgs of Ganja and that though the trial Court had acquitted the appellant for the offence under Section 8(c) r/w 29(1) of the NDPS Act, the appellant was found guilty of individual possession; that all the mandatory requirements have been complied with; that since no seizure was made from the person of the appellant, non compliance of Section 50 of the NDPS is not fatal to the prosecution; and that Section 42 and Section 57 of the NDPS Act has also been complied with and non compliance of Section 52-A of the NDPS Act, is not fatal as no prejudice is said to have been caused to the appellant and prayed for dismissal of the appeal.



WEB COPY

6. The prosecution had examined 4 witnesses to prove its case.

PW1 is the Sub-Inspector of Police, who went to the spot to arrest the appellant and the first accused on secret information. PW2 is the constable who accompanied PW1 for the said purpose. PW3 is the Deputy Director of Forensic Science Laboratory, who certified that the contraband contained cannabinoids and Ganja. PW4 is the investigating officer who filed the final report.

7. It is the version of PW1 that he had received secret information at about 6.30 a.m., on 22.02.2021 that two persons were bringing Ganja from Andhra Pradesh and that they were travelling in a bus from Andhra to Thiruverkadu, Kaduvetti Bus stand; that based on the information, PW1 and PW2 were waiting at the bus stand; that the appellant and the first accused were walking in a suspicious manner; that when PW1 intercepted they attempted to run from the place; that after compliance of the mandatory requirements, they found that the appellant was in possession of 5 Kgs of Ganja and first accused was in possession of 8 Kgs of Ganja; that samples were taken and both the accused were arrested



and FIR was registered. PW2, the Constable who had accompanied PW1 would corroborate the evidence of PW1 in all the above aspects spoken to by PW1. Except for eliciting from PW2 that only one gunny bag was seized, no other contradictions or information were elicited so as to disbelieve their testimony. As stated above, PW3 is the expert who opined that the samples contained Ganja and PW4 is the investigating officer and nothing has been elicited in the cross examination so as to disbelieve his testimony as well.

8. Though it is the case of the defence that independent witnesses were not examined this Court finds that there is no cross examination of the investigating officer or the other witnesses to suggest that they cannot be believed or that the non-examination of the independent witnesses has caused prejudice to the appellant. It is well settled that the police witnesses cannot be viewed with suspicion and if their evidence inspires confidence then non-examination of independent witnesses would not be fatal to the prosecution. In this case the witnesses have not been discredited.



WEB COPY

9. The submission made by the appellant is that the prosecution had seized two bags and that PW2 had admitted that only one bag was seized. However in the further cross examination, PW2 would state that he does not remember the said facts. Therefore, this Court is of the view that, that the said contradiction would not affect the prosecution case in any manner.

10. The other submission made by the learned counsel for the appellant is that the seized contraband was not sent immediately for expert analysis. Nothing has been elicited from PW3, who had conducted the examination to show that the seals were not intact. The cross-examination of PW3 is more in the form of suggestions and nothing has been elicited to disbelieve the evidence of PW3. Further discrepancy of 6 grams in the weight of the sample would not have any bearing as it is well known that if the leaves are dried, the weight would get reduced.

11. Further, the joint notice/communication to the appellant/A2 and the first accused under Section 50 of the NDPS Act could not be fatal to the prosecution case in the facts and circumstances of the case, as



admittedly, the contraband was seized from a bag in possession of the appellant and not from her person. Therefore, this Court is of the view that the contraventions alleged by the defence would not be of any avail to the appellant. Therefore this Court finds no infirmity in the judgment convicting the appellant for the aforesaid offences.

12. However, it is seen from the records that the appellant is aged 60 years that she has no bad antecedents. She is suffering from acute promyelocytic, thyroid and has breathing problem. She has been regularly taking treatment at the Stanley Hospital and has been an inpatient in the said hospital multiple times.

13. Considering all the above facts and the fact that the prosecution had not established the link between the first accused and this appellant, this Court is of the view that interest of justice would be met if the sentence imposed on the appellant is reduced to the period already undergone as it is stated that the appellant has been in custody for 8 months and 6 days i.e., from 22.02.2021 to 11.05.2021 during investigation and from 28.07.2023 to 10.01.2024, pending the appeal.



CRL A No. 921 of 2023

WEB COPY

14. Accordingly, the Criminal Appeal stands partly-allowed and it is ordered as follows:

(i) The conviction of the appellant by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, vide judgment in C.C.No.133 of 2022 dated 28.07.2023, for the offence under Section 8(c) r/w 20(b) (ii)(B) of the NDPS Act, is confirmed.

(ii) However, the sentence imposed by the trial Court for the said offence i.e., *to undergo two years rigorous imprisonment, is reduced to that of period already undergone.*

(iii) The fine amount and the default sentence imposed by the trial Court, remains unaltered.

20-02-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

ars



CRL A No. 921 of 2023

To

WEB COPY

1. The Special Judge,
I Additional Special Court for Exclusive Trial
of Cases under NDPS Act, Chennai
2. The Inspector of Police
NIB-CID, Chennai.
3. The Public Prosecutor,
High Court, Madras.



WEB COPY



CRL A No. 921 of 2023

SUNDER MOHAN J.

ars

**Pre-delivery Judgment in
CRL A No. 921 of 2023**

20-02-2026

_____Page 12 of 12_